

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2464 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

BHANABHAI B PATEL

Appearance:

MR Hardik C. RAVAL for Petitioner

MR JR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/10/1999

ORAL JUDGEMENT

Mr. Raval, the learned Advocate is present for the petitioner Corporation. Mr. J.R.Nanavaty, the learned advocate is appearing for the respondent workman. The facts of the present petition are that the respondent was working in the work shop in the Valsad Division as Head Mechanic. The respondent was initially working in the then Great Eastern Transport Co. as a Body Fitter and thereafter, as the said company came to be closed on

1.4.1953, he was appointed in the services of the petitioner corporation as Art Body Fitter on 1.8.1973. On 1.8.1973, he was promoted to the post of Head Mechanic and the respondent reached the age of 58 years in accordance with the rules of the corporation on 30.8.1978, the respondent retired from the service of the Corporation. The respondent feeling aggrieved by the said order of retirement from the petitioner corporation and on his belief that he has a right to continue in the service of the petitioner corporation till upto 30.4.1980 till he attain the age of 60 years, he made complaint before the conciliation officer. As no conciliation could be arrived at in the said proceedings, the conciliation officer made failure report to the labour commissioner on 15.11.1980. The Government had not referred the dispute before the labour court as it didnot find merit and against this inaction, the respondent had not taken up any legal proceedings whatsoever but instead, he straight way filed recovery application no. 156 of 1984 before the labour court under sec. 33(C)(2) of the Industrial Disputes Act, 1947.

After appreciating the evidence on record, the labour court, under its judgment and award dated 13.1.1989, held that the respondent was entitled to remain in service upto the age of 60 years as he was absorbed from the private transport operator and according to the policy of the Corporation, the respondent is entitled to continue and remain in service upto the age of sixty years and, therefore, the labour Court has set aside the order of retirement and directed the petitioner corporation to treat the respondent workman in service upto 30.4.1980 and pay all wages and service benefits for the said period.

Said judgment and award passed by the labour court has been impugned by the petitioner in this petition under Article 226 and/or 227 of the Constitution of India. While admitting this petition, this Court has granted interim relief as prayed for.

The learned advocate appearing for the petitioner has raised the contention that the labour court has no jurisdiction to decide a new right or to adjudicate the dispute while exercising the powers under sec. 33(C)(2) of the I.D.Act. The labour court while exercising the powers under section 33(C)(2) of the Act, being the executing court, has no power and/or authority to adjudicate the dispute and decide the legality of any order passed by the petitioner corporation and, therefore, the order impugned in this petition is an

order passed without jurisdiction and is beyond the scope and ambit of section 33(C)(2) of the Act. The learned advocate appearing for the respondent workman has also raised contention that it was the policy of the corporation to retire an employee who has been absorbed from private transport operators at the age of sixty years and according to the said policy, the respondent workman is entitled to remain in service upto the age of sixty years and, therefore, this court should not interfere with the order of the labour court.

After considering the submissions made from both the sides, according to my view, the law is quite settled that in a recovery proceedings, the labour court have no power or authority to decide or adjudicate any dispute between the parties while exercising the powers under section 33(C)(2) of the I.D.Act. Before the labour court, the workman must prove preexisting right for getting due amounts from the employer. After considering the award in question, the labour court has gone into the merits of the matter and has come to the conclusion that the respondent is entitled to remain and continue in service of the petitioner corporation upto the age of sixty years and, based on such conclusion, the labour court has set aside the order passed by the petitioner corporation. Said exercise of the labour court is without jurisdiction and the same cannot be done by the labour court while exercising the powers under section 33(C)(2) of the I.D. Act.

The law which has been decided by the Hon'ble apex Court in case of Municipal Corporation of Delhi versus Ganesh Razak reported in 1995 (2) LLJ, 395 wherein it was held that this decision itself indicates that the power of the labour court under section 33(C)(2) extends to interpretation of the award or settlement on which the workmens' right rests like executing court's power to interpret the decision for the purpose of execution where the basis of the claim is referable to the award or settlement but it does not extend to determine a dispute or entitlement or the basis of the claim, if, there be no prior adjudication or recognition of the same by the employer. In paragraph 12 of the said judgment, it has been further held that the labour court has no jurisdiction to first decide the entitlement of the workmen and then to proceed to compute the benefit so adjudicated on that basis in exercise of its powers under sec.33(C)(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and, thereafter, for the purpose of implementation, execution or enforcement thereof, the

labour court has power under sec.33(C)(2) like that of executing courts' power to interpret decree for the purpose of its execution. In course of such exercise, the labour court may interpret the basis of the claim made by the workman. However, it has no power or jurisdiction to consider and adjudicate whether the workman is entitled to such benefit. Similarly, recently, in case of Tara and others versus Director, Social Welfare and others reported in 1998 (2) LLJ page 632, the case of Municipal Corporation, Delhi (supra) has been considered. Recently, this Court has also considered the case of Municipal Corporation, Delhi (supra) in the decision reported in 1998 (2) GLR 984.

In view of these facts, the view taken by the labour court in deciding the status of the respondent being an employee of private operator or not and whether he is entitled to remain in service upto the age of 60 years cannot be permitted under sec. 33(C) (2) of the Act and, therefore, according to my opinion, the labour court has erred in law in deciding the question and also in adjudicating the process while determining the question whether the respondent is entitled to the benefit of remaining in service upto the age of sixty years being an employee of the private transport operator. The labour court ought not to have adjudicated the entitlement of the respondent in the proceedings under section 33(C)(2) of the Act and, therefore, the labour court has committed gross error which is apparent on the face of the record calling for interference of this court in exercise of the powers under Article 226 and/or 227 of the Constitution of India.

This petition is allowed. The impugned order of the labour court passed in recovery application no. 156 of 1984 dated 13.1.1989 is hereby quashed and set aside. Rule is made absolute with no order as to costs.

Since this is an old matter, in the larger interest of justice, it is clarified that if the respondent workman having any legal right which is required to be adjudicated, then, it will be open for the respondent workman to raise industrial dispute before the appropriate forum in accordance with law and in such event, the appropriate forum shall decide the same in accordance with law without raising question of delay in raising such dispute.

15.10.1999. (H.K.Rathod,J.)

